

§ 125.5

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that is otherwise controlled by this subchapter.

[58 FR 39310, July 22, 1993, as amended at 65 FR 45284, July 21, 2000; 66 FR 35900, July 10, 2001; 67 FR 15101, Mar. 29, 2002; 71 FR 20545, Apr. 21, 2006; 75 FR 52624, 52626, Aug. 27, 2010]

§ 125.5 Exemptions for plant visits.

(a) A license is not required for the oral and visual disclosure of unclassified technical data during the course of a classified plant visit by a foreign person, provided: The classified visit has itself been authorized pursuant to a license issued by the Directorate of Defense Trade Controls; or the classified visit was approved in connection with an actual or potential government-to-government program or project by a U.S. Government agency having classification jurisdiction over the classified defense article or classified technical data involved under Executive Order 12356 or other applicable Executive Order; and the unclassified information to be released is directly related to the classified defense article or technical data for which approval was obtained and does not disclose the details of the design, development, production or manufacture of any other defense articles. In the case of visits involving classified information, the requirements of the Department of Defense National Industrial Security Program Operating Manual must be met (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed).

(b) The approval of the Directorate of Defense Trade Controls is not required for the disclosure of oral and visual classified information to a foreign person during the course of a plant visit approved by the appropriate U.S. Government agency if: The requirements of the Department of Defense National Industrial Security Program Operating Manual have been met (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed); the classified information is directly related to that which was approved by the U.S. Government agency; it does not exceed that for which ap-

proval was obtained; and it does not disclose the details of the design, development, production or manufacture of any defense articles.

(c) A license is not required for the disclosure to a foreign person of unclassified technical data during the course of a plant visit (either classified or unclassified) approved by the Directorate of Defense Trade Controls or a cognizant U.S. Government agency provided the technical data does not contain information in excess of that approved for disclosure. This exemption does not apply to technical data which could be used for design, development, production or manufacture of a defense article.

[71 FR 20545, Apr. 21, 2006]

§ 125.6 Certification requirements for exemptions.

(a) To claim an exemption for the export of technical data under the provisions of this subchapter (e.g., §§ 125.4 and 125.5), the exporter must certify that the proposed export is covered by a relevant section of this subchapter, to include the paragraph and applicable subparagraph. Certifications consist of clearly marking the package or letter containing the technical data “22 CFR [insert ITAR exemption] applicable.” This certification must be made in written form and retained in the exporter’s files for a period of 5 years (see § 123.22 of this subchapter).

(b) For exports that are oral, visual, or electronic the exporter must also complete a written certification as indicated in paragraph (a) of this section and retain it for a period of 5 years.

[68 FR 61102, Oct. 27, 2003]

§ 125.7 Procedures for the export of classified technical data and other classified defense articles.

(a) All applications for the export or temporary import of classified technical data or other classified defense articles must be submitted to the Directorate of Defense Trade Controls on Form DSP-85.

(b) An application for the export of classified technical data or other classified defense articles must be accompanied by seven copies of the data and a completed Form DSP-83 (see § 123.10